

REMARKS

This communication is submitted in response to the Office Action of January 20, 2004.

Claims 1-23 and 25-46 are pending in the subject application with claims 1-3, 6, 8-11, 13-16, 20-23 and 25-28 having been amended, claim 24 having been canceled, and claims 44-46 having been added. Claims 4, 5, 7, 12, 17-19 and 29-43 have not been changed relative to their immediate prior version. Claims 7, 17-19 and 29-43 stand allowed by the Examiner.

Support for the amended and newly presented claims is found throughout the specification as originally filed such that the amended and new claims do not introduce any new matter.

The specification has been amended for consistency with the claims, and the amendments to the specification do not introduce any new matter.

Reconsideration of the subject application is respectfully requested in view of the foregoing amendments and the following remarks.

The objection to dependent claim 22 is submitted to be overcome with the present amendment by virtue of claim 22 having been amended to replace the term "interior" with the term "cavity" which has antecedent basis in independent claim 1.

The rejection of claims 6 and 16 under 35 U.S.C. §112, second paragraph, are believed to be overcome with the present amendment. Dependent claim 6 is directed to the subcombination of a compressible structure and has been amended to include language excluding the window structure itself from the scope of the claim. Dependent claim 16 has been amended to be rewritten in independent form as being directed to a protected window structure having the window structure within the scope of the claim. The amendments to claims 6 and 16 overcome the rejection under 35 U.S.C. §112, second paragraph, and this rejection should be withdrawn.

Claims 9-15 and 28 were objected to as being dependent upon a rejected base claim but were indicated as being allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Since claims 9, 10, 13-15 and 28 have each been amended to be rewritten in independent form to include all of the limitations of the base claim and any intervening claims, claims 9, 10, 13-15 and 28 should now be allowable along with dependent claims 11 and 12.

Claim 16 was indicated as being allowable if rewritten to overcome the rejection under 35 U.S.C. §112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. As pointed out above, claim 16 has been amended to be rewritten in independent form to claim the combination of a protected window structure and has also been amended to claim the limitations of the base claim and intervening claims. Accordingly, it is submitted that independent claim 16 should now be allowable.

The rejection of claims 1-6, 8 and 22-27 as being anticipated by Bessler and the rejection of claims 20 and 21 as being unpatentable over Bessler are respectfully traversed for the following reasons.

Independent claim 1 recites "a fluidic polymeric foam material for being introduced in said cavity, said fluidic material being capable of solidifying within said cavity into a body of shock absorbing compressible material providing shock absorbing protection for the glass pane." Bessler discloses an inflatable storm window 10 for eliminating air leakage around a conventional window sash. Bessler does not recognize the need to provide shock absorbing protection to the glass in a window structure, and the storm window 10 of Bessler does not require a body of shock absorbing compressible material over the glass in order to accomplish the objective of eliminating air leakage.

The storm window 10 of Bessler explicitly requires a transparent central portion (sheets 12, 13, 66 and 70) disposed over the glass 32 and circumscribed by an inflatable encircling tubular outer portion 14. In one embodiment, the transparent central portion is made up of transparent sheets 12 and 13 with there being a cavity 38 between sheets 12 and 13. The outer portion 14 is inflated with air, and ports 36 in outer portion 14 allow a gradual flow of the air into and out of the cavity 38. In another embodiment, outer member 14 has a groove 64 along its inside edge receiving a metallic strip 68 which holds the periphery of transparent sheet 70 forming the transparent central portion. In this embodiment, another means for filling the outer tubular member 14 may be foam-in-place plastic filler 72.

Where Bessler discloses the storm window 10 as having a cavity 38 over the glass 32, this cavity 38 is supplied with air which is allowed to flow into and out of the cavity via ports 36. Bessler's requirement of transparency for the central portion of the storm window 10, i.e. sheets 12 and 13, disposed over the glass 32 precludes the use of a polymeric foam material in cavity 38 since foam polymers cannot be transparent with current chemical technology. In addition, Bessler's teaching that the air is allowed to flow in and out of the cavity 38 through ports 36 precludes the use of a solidified material in cavity 38. For these reasons, Bessler clearly teaches away from the claimed invention.

Bessler's disclosure of a foam-in-place plastic filler 72 is explicitly limited by Bessler to the means for filling the outer tubular member 14. Notably, in the embodiment of Bessler where the plastic filler 72 is used to inflate the outer member 14, the central portion of the storm window is formed by the single transparent sheet 70 without any cavity for being disposed over the glass. Bessler thusly provides no motivation to use the plastic filler 72 in the cavity 38 and, as pointed out above, teaches away from use of a solidified material in cavity 38. The small size of ports 36 also teaches away from a fluidic foam material for being introduced in cavity 38 since the small size of ports 36 would restrict the flow of fluidic foam material into the cavity 38 and would become clogged with fluidic foam material during filling. There are also no teachings or suggestions by Bessler of the plastic filler 72 being compressible once it solidifies or of the plastic filled being a polymeric foam material. As noted above, Bessler's requirement that the central portion of the storm window be transparent precludes use of a polymeric foam in cavity 38. Accordingly, independent claim 1 is submitted to be clearly patentable over Bessler and should be

allowed along with dependent claims 4-6, 20-23, 25-27 and 44.

Dependent claims 20 and 21 recite limitations relating to the thickness of the compressible material. There are no teachings or suggestions whatsoever by Bessler of a solidified compressible material disposed over the glass 32 and having the particular thicknesses recited in claims 20 and 21 such that these claims can only be considered obvious over Bessler with the use of impermissible hindsight. Accordingly, claims 20 and 21 are submitted to be clearly patentable over Bessler for the additional limitations recited therein as well as being allowable with independent claim 1.

Newly presented dependent claim 44 recites the compressible material as including cells of a specific size range. As pointed out above, Bessler fails to disclose the plastic filler 72 as a compressible material much less a compressible material having cells of the specific size range recited in claim 44. Accordingly, dependent claim 44 is submitted to be clearly patentable over Bessler for the additional limitations recited therein as well as being allowable with independent claim 1.

Independent claim 2 recites "a window structure including a frame circumscribing an area containing exposed glass having an exterior facing side; a shaping member removably secured on said window structure and defining a cavity over said exterior facing side of said glass; a body of solidified compressible material in said cavity of a size to cover said area circumscribed by said frame at least substantially in its entirety to provide protection for said glass, said compressible material being supplied to said cavity in a

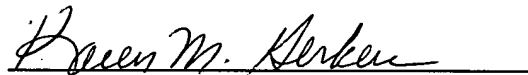
fluidic form and solidifying in said cavity; and a port in said shaping member communicating with said cavity by which said compressible material is supplied to said cavity in said fluidic form. Claim 2 requires the body of solidified compressible material to be of a size to cover the area circumscribed by the frame at least substantially in its entirety, and Bessler does not disclose the solidified plastic filler 72 as being either a compressible material or of a size to cover the area circumscribed by frame 17 at least substantially in its entirety. Bessler explicitly states that the plastic filler 72 is used for filling the outer tubular member. As best illustrated in Figs. 1, 2 and 5 of Bessler, the outer tubular member 14 extends close to and along the frame 17 and does not cover the area circumscribed by the frame 17 at least substantially in its entirety. In the embodiment of Bessler where plastic filler 72 is used, the outer tubular member 14 containing the plastic filler 72 circumscribes the transparent sheet 70 that is disposed over the major portion of the glass 32. In the embodiment of Bessler where cavity 38 defined between transparent sheets 12 and 13 is disposed over glass 32, air and not a solidified material must be used in the cavity given the small size of the ports 36 and the stated function of the ports to allow a gradual flow of air into and out of the cavity 38. The features recited in claim 2 can only be found in Bessler with the use of impermissible hindsight made possible with the teachings of the present invention. Since Bessler fails to disclose a body of solidified compressible material of a size to cover the area circumscribed by the window frame 17 at least substantially in its entirety, independent claim 2 cannot be anticipated by Bessler. Accordingly, independent claim 2 is submitted to be clearly patentable over Bessler and should be allowed along with dependent claims 3, 8, 45 and 46.

Dependent claim 3 recites the compressible material as "a polymeric foam" and Bessler's requirement of transparency for the central portion of the storm window teaches away from the use of a polymeric foam in cavity 38. Accordingly dependent claim 3 is submitted to be clearly patentable over Bessler for the additional limitations recited therein as well as being allowable with independent claim 2.

A Supplemental Information Disclosure Statement is submitted herewith citing references cited in the International Search Report for the corresponding PCT application.

In light of the foregoing, all of the claims of the subject application are submitted to be in condition for allowance. Action in conformance therewith is courteously solicited. Should any issues in the subject application remain unresolved, the Examiner is encouraged to contact the undersigned attorney.

Respectfully submitted,



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